

1 Daniel B. Beck, SBN 63865
2 Beck Law P.C.
3 2681 Cleveland Avenue
4 Santa Rosa CA 95403
5 Phone: 707-576-7175
6 Fax: 707-576-1878

7 Email: danbeck@becklaw.net

8 Attorneys for Debtors

9 UNITED STATES BANKRUPTCY COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 In re Case No. 11-11247

12 Matthew and Johanna Davenport, Chapter 13

13 Debtors(s)

14 **MOTION TO AVOID LIEN RELATED TO CLAIM OF FIA CARD SERVICES, N.A.**

15 Debtors Matthew and Johanna Davenport move the court for an order avoiding the lien
16 of FIA CARD SERVICES, N.A. held against debtors' real property located at 1673 Waring Court,
17 Santa Rosa, CA 95401. The ground for avoiding this lien is that any related claim is totally
18 unsecured under 11 U.S.C. § 506(a).

19 1. Debtor commenced this case on **April 4, 2011**

20 2. Among the assets at the commencement of the case was debtors' real property
21 commonly known as 1673 Waring Court, Santa Rosa, CA 95401. (the "Property")

22 3. Creditor FIA CARD SERVICES, N.A. is the servicer with respect to a judgment
23 lien in the amount of \$23,357.83

24 4. The property is subject to a mortgage lien, shown on the debtors' schedules, senior to
the lien sought to be avoided (the "Senior Liens") as follows:

a. Bank of America Home Loan Servicing, LP \$470,796.00

1 b. GMAC Mortgage \$42,286.14

2 5. The value of the Property at the commencement of the case was \$235,000 as
3 reflected in the Request for Judicial Notice, filed herewith.

4 6. The Senior Liens totals \$513,082.14 which is more than the valued of the Property.

5 7. Because the lien is totally unsecured, Debtor is entitled to an order that, for purposes
6 of their chapter 13 plan, the Lien is valued at zero and that FIA CARD SERVICES, N.A. does not
7 have a secured claim and the Lien be voided upon debtors' chapter 13 discharge.

8 WHEREFORE, Debtor prays the court to enter an order as follows:

9 For purposes of the debtors' chapter 13 plan, the Lien is valued at zero and FIA CARD
10 SERVICES, N.A., does not have a secured claim. Upon entry of the debtors' chapter 13
11 discharge, the Lien shall be voided pursuant to 11 U.S.C. § 1322(b)(2) and be of effect. If the
12 debtors' case is dismissed or converted before they obtain their chapter 13 discharge, the Lien
13 shall remain in full force and effect per 11 U.S.C. §§ 348(f)(1)(c) and 349 (b)(1)(c).

14 Respectfully submitted,

15 Date: April 29, 2011

16 BECK LAW P.C.

17 /s/ Daniel B. Beck

18 by: Daniel B. Beck
19 Attorneys for Debtor(s)

DECLARATION OF MATTHEW DAVENPORT

I, MATTHEW DAVENPORT am the debtor described in the above motion. Based on my personal knowledge and my examination of the documents described above I declare under penalty of perjury that the facts described in the above motion are true and correct to the best of my knowledge information and belief.

Date: April 29, 2011

/s/ Matthew Davenport
Matthew Davenport